Message

From: Dixon, Sean [dixon.sean@epa.gov]
Sent: 12/14/2018 7:24:13 PM
To: Dunn, Alexandra [dunn.alexandra@epa.gov]; Szaro, Deb [Szaro.Deb@epa.gov]
CC: Moraff, Kenneth [Moraff.Ken@epa.gov]; Conway, Timothy [Conway.Tim@epa.gov]; Gutro, Doug [Gutro.Doug@epa.gov]; Olson, Bryan [Olson.Bryan@epa.gov]
Subject: state PFAS petitions update story

FYI – news on the state PFAS petitions

SD

https://insideepa.com/daily-news/environmentalists-press-states-sdwa-technology-standard-pfas

Environmentalists Press States For SDWA Technology Standard For PFAS

December 14, 2018

New England environmentalists are quietly pressing states in the region to set enforceable "treatment technique" standards for drinking water utilities to address thousands of chemicals in the per- and polyfluoroalkyl substances (PFAS) class, an interim step they hope will limit exposures as they await chemical-by-chemical health-based drinking water standards.

If successful, the approach could provide a new technology-based approach for addressing widespread contamination from the chemicals even as EPA struggles to respond under the Safe Drinking Water Act (SDWA) to growing calls by states, environmentalists, lawmakers and others to set health-based maximum contaminant levels (MCLs) for the substances.

In addition, the approach could allow regulators to set a standard to address the entire class of chemicals, rather than awaiting the more burdensome and time-consuming approach of a chemical-by-chemical rule.

The effort, being spearheaded by the Conservation Law Foundation (CLF) along with the Toxics Action Center, has already led to petitions this fall to regulators in Connecticut, Massachusetts and Vermont.

CLF plans to send similar letters in the next couple of weeks to New Hampshire and Maine, and eventually to Rhode Island as well, an attorney with CLF says.

The effort has had mixed reactions so far. For example, Connecticut Public Health Commissioner Raul Pinon denied the petition in a Nov. 21 response saying the department is continuing "to evaluate the rapidly evolving science surrounding PFAS toxicity and is not presently in a position to initiate the adoption of a regulation."

Massachusetts Department of Environmental Protection (DEP) is reviewing the petition and plans to consider it at a Jan. 16 meeting, inviting the petitioners to present their views at that time, according to Nov. 5 and Dec. 13 letters from DEP Commissioner Martin Suuberg.

And Vermont has not yet responded to the petition, although CLF has agreed to give the state an extension for a response until the end of January and plans to meet with agency staff earlier in January, the CLF attorney says.

But the attorney says environmentalists are also preparing to press state legislatures in the region to act on the issue if regulators reject their petitions and are unwilling to consider solutions, noting an appeal of a denial can be time-consuming.

For now, the group is pressing New England states to develop treatment techniques and has no plans to push EPA on it, letting other environmental groups press the agency, the source says.

PFAS are a class of chemicals that are toxic, persistent, and bioaccumulative and that have been prompting growing concern around the country, particularly in the Northeast, due to their presence in drinking water systems and links to adverse health impacts at low levels.

The chemicals have been used widely in non-stick applications such as clothing, cookware and firefighting foam.
Their presence in drinking water has prompted broad concerns in states from Michigan to New Jersey and across the Northeast, with many federal lawmakers, environmentalists and others urging EPA to set one or more MCLs to address the chemicals.
While EPA is only slated to release a long-awaited action plan next year, the agency has signaled it is hesitant to commit to crafting an MCL for one or more PFAS given scientific and other uncertainties, as well as the lengthy process involved in crafting an MCL.

'Whack-a-Mole Approach'

While CLF and other environmentalists continue to call for an MCL, they are now also calling on states to craft technology-based treatment standards for drinking water utilities, which they say could be used "in lieu of setting [an MCL] for specific PFAS," CLF's Oct. 25 petition to Connecticut's Department of Public Health says.
The groups' petition to Connecticut adds that the chemical-by-chemical regulatory framework for addressing toxic chemicals is inefficient, placing public health at risk.
"The 'whack-a-mole' approach is especially troublesome when it comes to setting drinking water standards for emerging contaminants like PFAS, because it is time consuming and expensive to assess them, it is 'technically and financially challenging to identify and reverse environmental and human exposure to PFASs[,]' and both of these issues are exacerbated by the continual introduction of new PFAS compounds," the letter says, in part referencing a 2017 article in the peer-reviewed journal *Environmental Science & Technology*.
The petition notes that at least 3,000 PFAS are in use, but regulators lack information on where they are being used or released, and companies regard newly developed PFAS as trade secrets, giving regulators little information on their structure or use. Therefore, setting MCLs for each compound is unsustainable, it says.
"There is no way" states or EPA have the resources to deal with these contaminants one by one, the CLF attorney tells *Inside EPA*.
As a result, the groups call for states to adopt technology-based treatment standards for public drinking water utilities in lieu of an MCL.
"A treatment technique is an enforceable procedure or level of technological performance which public water systems must follow to ensure control of a contaminant," the letter to Connecticut says, citing EPA data. And it notes that in cases where such standards are adopted in lieu of an MCL, the SDWA requires the technique to "prevent known or anticipated adverse effects on the health of persons to the extent feasible."
According to EPA's website, the agency sets a treatment technique instead of an MCL "[w]hen there is no reliable method that is economically and technically feasible to measure a contaminant at concentrations to indicate there is not a public health concern." It is "an enforceable procedure or level of technological performance which public water systems must follow to ensure control of a contaminant."

'Level Of Contaminant'

The groups' letter to Connecticut adds that EPA has adopted several treatment standards in lieu of an MCL in cases that have met the economically or technically infeasible criteria.
For example, the agency's lead and copper rule requires public water systems to test drinking water in the homes of consumers and undertake additional treatment measures to control lead if 10 percent of the samples exceed 15 parts per billion.
In addition, the Surface Water Treatment Rule requires most public water systems that obtain water from surface water or groundwater fed by surface water to use filters and disinfectants to reduce pathogens.
"In both cases, EPA had to establish a unique procedure to address the risks posed by a specific contaminant because an MCL would not have been practical or protective of public health due to the unique characteristics of the contaminants," the letter says.

In a similar vein, the groups argue that “the unique characteristics of the PFAS class pose a public health threat that cannot be adequately addressed with the establishment of an MCL for one or a few PFAS chemicals.”

As a result, the groups suggest the state could adopt a rule that “requires public water systems to install appropriate treatment technologies where (1) the sum of all measurable PFAS exceeds a conservative threshold level that is protective of public health and takes into account the cumulative impacts of all PFAS chemicals or (2) the presence of PFAS compounds is detected using 'non-targeted' laboratory analysis.”

Alternatively, a rule could require “a robust source water assessment for PFAS and . . . treatment where PFAS may be present in the source water.”

The petition also notes that there are established and novel methods for removing PFAS, and says that a “treatment train” of several technologies that combine adsorption, separation and destruction in sequence would effectively treat drinking water and protect public health.

It adds that such a standard for the PFAS class, rather than developing MCLs for many PFAS, will expend fewer resources and provide protections from exposure to unsafe levels more quickly.

Nevertheless, the petition adds that if states do not adopt a treatment technique, as an alternative and at a “bare minimum,” states should adopt an MCL for the PFAS class or for each PFAS posing risk to public water systems. Also, in the interim, the states should adopt Vermont's health advisory for five PFAS at 20 parts per trillion in drinking water as an MCL for the PFAS class, the letter says.

In the petitions, CLF and other groups argue these three states “can -- and must -- take the lead in the absence of federal safeguards.” Further, the groups note the weaknesses of current drinking water action levels that have been adopted by these states, noting that these levels do not require water systems to test for the chemicals or to treat unsafe concentrations because a federal or state drinking water standard has not been set. --*Suzanne Yohannan* (syohannan@iwpnews.com)